

in each discipline necessary to carry out the audit; and

(ii) independence and objectivity, including that the firm be free from personal or external impairments to independence, and should assume an independent position with the State commission and auditee, making certain that the audit is based upon an impartial consideration of all pertinent facts and responsible opinions.

(B) The public utility company and the exempt telecommunications company shall cooperate fully with all reasonable requests necessary to perform the audit and the public utility company shall bear all costs of having the audit performed.

(3) Availability of auditor's report

The auditor's report shall be provided to the State commission not later than 6 months after the selection of the auditor, and provided to the public utility company not later than 60 days thereafter.

(n) Applicability of telecommunications regulation

Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934 [47 U.S.C. 151 et seq.], or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of an exempt telecommunications company.

(Aug. 26, 1935, ch. 687, title I, §34, as added Feb. 8, 1996, Pub. L. 104-104, title I, §103, 110 Stat. 81.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsecs. (a)(2) and (n), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

This chapter, referred to in subsecs. (b) to (e) and (j), was in the original "this Act", and was translated as reading "this title", meaning title I of act Aug. 26, 1935, ch. 687, known as the Public Utility Holding Company Act of 1935, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 34 of act Aug. 26, 1935, ch. 687, was renumbered section 35 and is classified to section 79z-6 of this title.

§ 79z-6. Separability clause

If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 26, 1935, ch. 687, title I, §35, formerly §32, 49 Stat. 837; renumbered §34, Oct. 24, 1992, Pub. L. 102-486, title VII, §711, 106 Stat. 2905; renumbered §35, Feb. 8, 1996, Pub. L. 104-104, title I, §103, 110 Stat. 81.)

PRIOR PROVISIONS

A prior section 35 of act Aug. 26, 1935, ch. 687, was renumbered section 36 and is classified to section 79 of this title.

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER I—INVESTMENT COMPANIES

- | | |
|---------|--|
| Sec. | |
| 80a-1. | Findings and declaration of policy.
(a) Findings.
(b) Policy. |
| 80a-2. | Definitions; applicability; rulemaking considerations.
(a) Definitions.
(b) Applicability to government.
(c) Consideration of promotion of efficiency, competition, and capital formation. |
| 80a-3. | Definitions of investment company.
(a) Definitions.
(b) Exemption from provisions.
(c) Further exemptions. |
| 80a-3a. | Protection of philanthropy under State law.
(a) Registration requirements.
(b) Treatment of charitable organizations.
(c) State action.
(d) Definitions. |
| 80a-4. | Classification of investment companies. |
| 80a-5. | Subclassification of management companies.
(a) Open-end and closed-end companies.
(b) Diversified and non-diversified companies.
(c) Loss of status as diversified company. |
| 80a-6. | Exemptions.
(a) Exemption of specified investment companies.
(b) Exemption of employees' security company upon application; matters considered.
(c) Exemption of persons, securities or any class or classes of persons as necessary and appropriate in public interest.
(d) Exemption of closed-end investment companies.
(e) Application of certain specified provisions of subchapter to otherwise exempt companies.
(f) Exemption of closed-end company treated as business development company. |
| 80a-7. | Transactions by unregistered investment companies.
(a) Prohibition of transactions in interstate commerce by companies.
(b) Prohibition of transactions in interstate commerce by depositors or trustees of companies.
(c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies.
(d) Prohibition of transactions in interstate commerce by companies not organized under laws of the United States or a State; exceptions.
(e) Disclosure by exempt charitable organizations. |
| 80a-8. | Registration of investment companies.
(a) Notification of registration; effective date of registration.
(b) Registration statement; contents.
(c) Alternative information.
(d) Registration of unit investment trusts.
(e) Failure to file registration statement or omissions of material fact.
(f) Cessation of existence as investment company. |
| 80a-9. | Ineligibility of certain affiliated persons and underwriters.
(a) Persons deemed ineligible for service with investment companies, etc.; investment adviser. |

- | | |
|--|--|
| <p>Sec.</p> <p>(b) Certain persons serving investment companies; administrative action of Commission.</p> <p>(c) Application of ineligible person for exemption.</p> <p>(d) Money penalties in administrative proceedings.</p> <p>(e) Authority to enter order requiring accounting and disgorgement.</p> <p>(f) Cease-and-desist proceedings.</p> <p>(g) Corporate or other trustees performing functions of investment advisers.</p> <p>80a-10. Affiliations or interest of directors, officers, and employees.</p> <p>(a) Interested persons of company who may serve on board of directors.</p> <p>(b) Employment and use of directors, officers, etc., as regular broker, principal underwriter, or investment banker.</p> <p>(c) Officers, directors, or employees of one bank as majority of board of directors of company; exceptions.</p> <p>(d) Exception to limitation of number of interested persons who may serve on board of directors.</p> <p>(e) Death, disqualification, or resignation of directors as suspension of limitation provisions.</p> <p>(f) Officer, director, etc., of company acting as principal underwriter of security acquired by company.</p> <p>(g) Advisory boards; restrictions on membership.</p> <p>(h) Application of section to unincorporated registered management companies.</p> <p>80a-11. Offers to exchange securities.</p> <p>(a) Approval by Commission for exchanges of securities on basis other than relative net asset value.</p> <p>(b) Application of section to offers pursuant to plan of reorganization.</p> <p>(c) Application of section to specific exchange offers.</p> <p>80a-12. Functions and activities of investment companies.</p> <p>(a) Purchase of securities on margin; joint trading accounts; short sales of securities; exceptions.</p> <p>(b) Distribution by investment company of securities of which it is issuer.</p> <p>(c) Limitations on commitments as underwriter.</p> <p>(d) Limitations on acquisition by investment companies of securities of other specific businesses.</p> <p>(e) Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc.</p> <p>(f) Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations.</p> <p>(g) Exceptions to limitation on ownership by investment company of securities of insurance company.</p> <p>80a-13. Changes in investment policy.</p> <p>80a-14. Size of investment companies.</p> <p>(a) Public offerings.</p> <p>(b) Study on effects of size.</p> <p>80a-15. Contracts of advisers and underwriters.</p> <p>(a) Written contract to serve or act as investment adviser; contents.</p> | <p>Sec.</p> <p>(b) Written contract with company for sale by principal underwriter of security of which company is issuer; contents.</p> <p>(c) Approval of contract to undertake service as investment adviser or principal underwriter by majority of noninterested directors.</p> <p>(d) Equivalent of vote of majority of outstanding voting securities in case of common-law trust.</p> <p>(e) Exemption of advisory boards or members from provisions of this section.</p> <p>(f) Receipt of benefits by investment adviser from sale of securities or other interest in such investment adviser resulting in assignment of investment advisory contract.</p> <p>80a-16. Board of directors.</p> <p>(a) Election of directors.</p> <p>(b) Term vacancies.</p> <p>(c) Trustees of common-law trusts.</p> <p>80a-17. Transactions of certain affiliated persons and underwriters.</p> <p>(a) Prohibited transactions.</p> <p>(b) Application for exemption of proposed transaction from certain restrictions.</p> <p>(c) Sale or purchase of merchandise from any company or furnishing of services incident to lessor-lessee relationship.</p> <p>(d) Joint or joint and several participation with company in transactions.</p> <p>(e) Acceptance of compensation, commissions, fees, etc.</p> <p>(f) Custody and maintenance of securities and investments.</p> <p>(g) Bonding of officers and employees having access to securities or funds.</p> <p>(h) Provisions in charter, by-laws, etc., protecting against liability for willful misfeasance, etc.</p> <p>(i) Provisions in contracts protecting against willful misfeasance, etc.</p> <p>(j) Rules and regulations prohibiting fraudulent, deceptive or manipulative courses of conduct.</p> <p>80a-18. Capital structure of investment companies.</p> <p>(a) Qualifications on issuance of senior securities.</p> <p>(b) Asset coverage in respect of senior securities.</p> <p>(c) Prohibitions relating to issuance of senior securities.</p> <p>(d) Warrants and rights to subscription.</p> <p>(e) Application of section to specific senior securities.</p> <p>(f) Senior securities securing loans from bank; securities not included in "senior security".</p> <p>(g) "Senior security" defined.</p> <p>(h) "Asset coverage" defined.</p> <p>(i) Future issuance of stock as voting stock; exceptions.</p> <p>(j) Securities issued by registered face-amount certificate company.</p> <p>(k) Application of section to companies operating under Small Business Investment Act provisions.</p> <p>80a-19. Payments or distributions.</p> <p>(a) Dividends; restriction; exception.</p> <p>(b) Long-term capital gains; limitation.</p> <p>80a-20. Proxies; voting trusts; circular ownership.</p> <p>(a) Prohibition on use of means of interstate commerce for solicitation of proxies.</p> <p>(b) Prohibition on use of means of interstate commerce for sale of voting-trust certificates.</p> |
|--|--|

Sec.		Sec.	
	(c) Prohibition on purchase of securities knowingly resulting in cross-ownership or circular ownership.		(c) Sale of certificates; requirements.
	(d) Duty to eliminate existing cross-ownership or circular ownership.		(d) Surrender of certificates; regulations.
80a-21.	Loans by management companies.		(e) Refund privileges; notice; rules.
80a-22.	Distribution, redemption, and repurchase of securities; regulations by securities associations.		(f) Charges, statement; rules; surrender of certificates; regulations.
	(a) Rules relating to minimum and maximum prices for purchase and sale of securities from investment company; time for resale and redemption.		(g) Governing provisions; election.
	(b) Rules relating to purchase of securities by members from issuer investment company.		(h) Sale of certificates; restrictions.
	(c) Conflicting rules of Commission and associations.		(i) Applicability to registered separate account funding variable insurance contracts.
	(d) Sale of securities except to or through principal underwriter; price of securities.	80a-28.	Face-amount certificate companies.
	(e) Suspension of right of redemption or postponement of date of payment.		(a) Issuance or sale of certificates.
	(f) Restrictions on transferability or negotiability of securities.		(b) Asset requirements prior to sale of certificates.
	(g) Issuance of securities for services or property other than cash.		(c) Certificate reserve requirements.
80a-23.	Closed-end companies.		(d) Provisions required in certificate.
	(a) Issuance of securities.		(e) Liability of holder to legal action for unpaid amount of certificate.
	(b) Sale of common stock at price below current net asset value.		(f) Optional right to paid up certificate in lieu of cash surrender value.
	(c) Purchase of securities of which it is issuer; exceptions.		(g) Application of section to company issuing certificates only to holders of previously issued certificates.
80a-24.	Registration of securities under Securities Act of 1933.		(h) Declaration or payment of dividends.
	(a) Registration statement; contents.		(i) Application of section to certificates issued prior to effective date of section.
	(b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing.	80a-29.	Reports and financial statements of investment companies and affiliated persons.
	(c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate.		(a) Annual report by company.
	(d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust.		(b) Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders.
	(e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts.		(c) Minimizing reporting burdens.
	(f) Registration of indefinite amount of securities.		(d) Reports under this section in lieu of reports under other provisions of law.
	(g) Additional prospectuses.		(e) Semi-annual reports to stockholders.
80a-25.	Reorganization plans; reports by Commission.		(f) Additional information.
	(a) Filing of reorganization plan and other information with Commission.		(g) Certificate of independent public accountants.
	(b) Advisory report by Commission at request of shareholders.		(h) Duties and liabilities of affiliated persons.
	(c) Enjoinder of plan of reorganization.		(g) Disclosure to church plan participants.
	(d) Application of section to reorganizations under title 11.		(h) Notice to Commission.
80a-26.	Unit investment trusts.	80a-30.	Accounts and records.
	(a) Custody and sale of securities.		(a) Maintenance of records.
	(b) Substitution of securities.		(b) Examinations of records.
	(c) Binding contract or agreement embodying applicable provisions deemed to qualify non-complying instrument by which securities were issued.		(c) Limitations on disclosure by Commission.
	(d) Liquidation of unit investment trust.		(d) Definitions.
	(e) Exemption.		(e) Regulatory authority.
80a-27.	Periodic payment plans.		(f) Exemption authority.
	(a) Sale of certificates; restrictions.	80a-31.	Accountants and auditors.
	(b) Exemptions.		(a) Selection of accountant.
			(b) Selection of controller or other principal accounting officer.
			(c) Reports of accountants and auditors.
		80a-32.	Filing of documents with Commission in civil actions.
		80a-33.	Destruction and falsification of reports and records.
			(a) Willful destruction.
			(b) Untrue statements or omissions.
		80a-34.	Unlawful representations and names.
			(a) Unlawful representation of guarantee by United States or agency thereof.
			(b) Unlawful representation of sponsorship by United States or agency thereof.
			(c) Statement of registration under securities provisions.
			(d) Deceptive or misleading names.
		80a-35.	Breach of fiduciary duty.
			(a) Civil actions by Commission; jurisdiction; allegations; injunctive or other relief.

Sec.		Sec.	
	(b) Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction.		(h) Inquiry procedures.
	(c) Corporate or other trustees performing functions of investment advisers.		(i) Rules and regulations of Commission.
80a-36.	Larceny and embezzlement.		(j) Warrants, options, and rights to purchase voting securities; loans to facilitate executive compensation plans.
80a-37.	Rules, regulations, and orders.		(k) Restriction on brokerage commissions.
	(a) Powers of Commission.		(l) Persons subject to brokerage commission restrictions.
	(b) Filing of information and documents.		(m) Receipt of fee or salary from transaction participant.
	(c) Good faith conformance with rules, regulations, and orders.		(n) Profit-sharing plans.
80a-38.	Procedure for issuance of rules and regulations.		(o) Required majority for approval of proposed transactions.
80a-39.	Procedure for issuance of orders.	80a-57.	Changes in investment policy.
	(a) Notice and hearing.	80a-58.	Incorporation of subchapter provisions.
	(b) Application verified under oath admissible as evidence.	80a-59.	Functions and activities of business development companies.
	(c) Parties.	80a-60.	Capital structure.
80a-40.	Hearings by Commission.		(a) Exceptions for business development company.
80a-41.	Enforcement of subchapter.		(b) Compliance.
	(a) Investigation.	80a-61.	Loans.
	(b) Administration of oaths and affirmations, subpoena of witnesses, etc.	80a-62.	Distribution and repurchase of securities.
	(c) Jurisdiction of courts of United States.	80a-63.	Accounts and records.
	(d) Action for injunction.		(a) Exception for business development company.
	(e) Money penalties in civil actions.		(b) Risk factors statement; availability.
80a-42.	Court review of orders.	80a-64.	Preventing compliance with subchapter; liability of controlling persons.
80a-43.	Jurisdiction of offenses and suits.	SUBCHAPTER II—INVESTMENT ADVISERS	
80a-44.	Disclosure of information filed with Commission; copies.	80b-1.	Findings.
80a-45.	Reports by Commission; hiring and leasing authority.	80b-2.	Definitions.
	(a) Annual report.	80b-3.	Registration of investment advisers.
	(b) Hiring and leasing authority.		(a) Necessity of registration.
80a-46.	Validity of contracts.		(b) Investment advisers who need not be registered.
	(a) Waiver of compliance as void.		(c) Procedure for registration; filing of application; effective date of registration; amendment of registration.
	(b) Equitable results; rescission; severance.		(d) Other acts prohibited by subchapter.
80a-47.	Violation of subchapter.		(e) Censure, denial, or suspension of registration; notice and hearing.
	(a) Procurement.		(f) Bar or suspension from association with investment adviser; notice and hearing.
	(b) Obstructing compliance.		(g) Registration of successor to business of investment adviser.
80a-48.	Penalties.		(h) Withdrawal of registration.
80a-49.	Construction with other laws.		(i) Money penalties in administrative proceedings.
80a-50.	Separability.		(j) Authority to enter order requiring accounting and disgorgement.
80a-51.	Short title.		(k) Cease-and-desist proceedings.
80a-52.	Effective date.	80b-3a.	State and Federal responsibilities.
80a-53.	Election to be regulated as business development company.		(a) Advisers subject to State authorities.
	(a) Eligibility.		(b) Advisers subject to Commission authority.
	(b) Form and manner of notification; effect.		(c) Exemptions.
	(c) Revocation or withdrawal of election.		(d) Filing depositories.
80a-54.	Acquisition of assets by business development companies.		(e) State assistance.
	(a) Permissible assets; percentage.	80b-4.	Reports by investment advisers.
	(b) Valuation of assets.	80b-4a.	Prevention of misuse of nonpublic information.
80a-55.	Qualifications of directors.	80b-5.	Investment advisory contracts.
	(a) Non-interested persons.		(a) Compensation, assignment, and partnership-membership provisions.
	(b) Vacancies; suspension of provisions.		(b) Compensation prohibition inapplicable to certain compensation computations.
80a-56.	Transactions with certain affiliates.		(c) Measurement of changes in compensation.
	(a) Transactions involving controlling or closely affiliated persons.		(d) "Investment advisory contract" defined.
	(b) Controlling or closely affiliated persons.		(e) Exempt persons and transactions.
	(c) Exemption orders.	80b-6.	Prohibited transactions by investment advisers.
	(d) Transactions involving noncontrolling shareholders or affiliated persons.		
	(e) Noncontrolling shareholders or affiliated persons; executive officer.		
	(f) Approval of proposed transactions.		
	(g) Transactions in the ordinary course of business.		

- Sec.
 80b-6a. Exemptions.
 80b-7. Material misstatements.
 80b-8. General prohibitions.
 (a) Representations of sponsorship by United States or agency thereof.
 (b) Statement of registration under Securities Exchange Act of 1934 provisions.
 (c) Use of name "investment counsel" as descriptive of business.
 (d) Use of indirect means to do prohibited act.
 80b-9. Enforcement of subchapter.
 (a) Investigation.
 (b) Administration of oaths and affirmations, subpoena of witnesses, etc.
 (c) Jurisdiction of courts of United States.
 (d) Action for injunction.
 (e) Money penalties in civil actions.
 80b-10. Disclosure of information by Commission.
 (a) Information available to public.
 (b) Disclosure of fact of examination or investigation; exceptions.
 (c) Disclosure by investment adviser of identity of clients.
 80b-11. Rules, regulations, and orders of Commission.
 (a) Power of Commission.
 (b) Effective date of regulations.
 (c) Orders of Commission after notice and hearing; type of notice.
 (d) Good faith compliance with rules and regulations.
 80b-12. Hearings.
 80b-13. Court review of orders.
 (a) Petition; jurisdiction; findings of Commission; additional evidence; finality.
 (b) Stay of Commission's order.
 80b-14. Jurisdiction of offenses and suits.
 80b-15. Validity of contracts.
 (a) Waiver of compliance as void.
 (b) Rights affected by invalidity.
 80b-16. Annual reports of Commission.
 80b-17. Penalties.
 80b-18. Hiring and leasing authority of Commission.
 80b-18a. State regulation of investment advisers.
 (a) Jurisdiction of State regulators.
 (b) Dual compliance purposes.
 (c) Limitation on capital and bond requirements.
 (d) National de minimis standard.
 80b-19. Separability.
 80b-20. Short title.
 80b-21. Effective date.

SUBCHAPTER I—INVESTMENT COMPANIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77b, 77r, 78c, 78m, 78n, 78o, 78s, 78u-2, 80b-2, 80b-3, 80b-3a, 80b-5, 687, 687b, 3904 of this title; title 7 sections 6, 12a; title 12 sections 1464, 1465, 1831a, 1843, 2279aa-12, 3503; title 26 sections 368, 851, 852, 856, 1246, 4975, 6049; title 29 sections 432, 1001, 1002, 1101; title 42 section 9675; title 43 section 1625.

§ 80a-1. Findings and declaration of policy

(a) Findings

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 of this title, and facts otherwise disclosed and ascertained, it is found that investment companies are affected with a national public interest in that, among other things—

- (1) the securities issued by such companies, which constitute a substantial part of all secu-

rities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Policy

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 of this title, and facts otherwise disclosed and ascertained, it is declared that the national public interest and the interest of investors are adversely affected—

(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2) when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;

(3) when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4) when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment